

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSEPH TETAK,

Petitioner,

Case No. 2:21-cv-3903

vs.

JUDGE EDMUND A. SARGUS, JR

Magistrate Judge Elizabeth P. Deavers

**WARDEN, NOBLE CORRECTIONAL
INSTITUTION,**

Respondent.

OPINION AND ORDER

This matter is before the Court for consideration of Petitioner’s Objection to the Magistrate Judge’s Report and Recommendation. (ECF No. 11.) Petitioner again argues that his appellate attorney was ineffective for failing to raise on appeal what he calls the “‘dead-bang winning’ argument that he was twice punish[ed] for the same offence [*sic*].” (Petition at p. 1.) He maintains the state courts failed to interpret *Blockburger v. United States*, 284 U.S. 299 (1932), properly and questions why he, as a layman “can figure this out, how could a licensed attorney not do the same?” (Objections at p. 2.)

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. The Court has reviewed Petitioner’s Objections and the Report and Recommendation. The Magistrate Judge applied the proper standard in assessing whether there was any reasonable argument that counsel satisfied *Strickland*’s deferential standard. The Court agrees with the Magistrate Judge that the state appellate court’s recitation of the facts of the case, *State v. Tetak*, 2020-Ohio-3263, at ¶ 2, show that there was ample evidence from which appellate counsel could have reasonably

concluded that the sentencing court's conclusion that kidnapping was not an allied offense was not contrary to *Blockburger*, and thus, that the issue was not worth raising on appeal.

Petitioner's Objections, as were his original claims, are unavailing.

For these reasons, Petitioner's Objection (ECF No. 11) are **OVERRULED**. The Report and Recommendation (ECF No. 10) is **ADOPTED AND AFFIRMED**. The Petition for Writ of Habeas Corpus (ECF No. 1) is **DENIED**. This case is **DISMISSED**.

IT IS SO ORDERED.

DATED: 8/15/2022

s/ Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE